



FRIENDS OF THE RIVER  
1418 20<sup>TH</sup> STREET, SUITE 100  
SACRAMENTO, CA 95811

July 16, 2015

Via Email and U.S. Mail

The Honorable Sally Jewell  
Secretary of the Interior  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240  
[exsec@ios.doi.gov](mailto:exsec@ios.doi.gov)

David Murillo, Regional Director  
U.S. Bureau of Reclamation  
2800 Cottage Way  
Sacramento, CA 95825  
[dmurillo@usbr.gov](mailto:dmurillo@usbr.gov)

John Laird, Secretary  
California Natural Resources Agency  
1416 Ninth Street, Suite 1311  
Sacramento, CA 95814  
[Kinberly.goncalves@resources.ca.gov](mailto:Kinberly.goncalves@resources.ca.gov)

Mark W. Cowin, Director,  
California Department of Water Resources  
P.O. Box 942836, Room 1115-1  
Sacramento, CA 94236-0001  
[Mark.cowin@water.ca.gov](mailto:Mark.cowin@water.ca.gov)

[BDCPComments@icfi.com](mailto:BDCPComments@icfi.com)

**Re: Request for 77-day Extension of Comment Deadline for BDCP/California Water Fix RDEIR/SDEIS Comments**

Dear Secretary Jewell, Regional Director Murillo, Secretary Laird, Director Cowin and Federal and California Agencies, Officers, and Staff Members Carrying out the BDCP/California Water Fix:

Friends of the River, Restore the Delta, the California Water Impact Network, the California Sportfishing Protection Alliance, and the Environmental Water Caucus (EWC) (a coalition of over 30 nonprofit environmental and community organizations and California Indian Tribes) request an extension of at least 77 days for submitting public comments on the 8000 pages (we believe) supplementing 40,000 pages previously issued, constituting the Bay Delta Conservation Plan (BDCP)/California Water Fix Partially Recirculated Draft EIR/Supplemental Draft EIS (RDEIR/SDEIS) for the BDCP Draft EIR/EIS. ***This request would extend the deadline for public comment on those documents from August 31, 2015, to at least November 16, 2015.*** This is a request for a 120 day period for public comment in place of the 45 day period provided by the BDCP lead agencies, the U.S. Bureau of Reclamation, United States Department of the Interior and the California Department of Water Resources, California Natural Resources Agency. (The last day for a 120 day comment period would fall on a Saturday, November 14, 2015. This Request follows federal and California practice of extending a time period that falls on a Saturday or Sunday to the next business day).

***This Request is for an extension of time for the public including all individuals and non-governmental organizations, and also for public agencies, to comment on the subject documents.*** This Request is necessary because of the extraordinary volume of the technical and scientific material to be read, understood, researched, and then commented upon.

The National Environmental Policy Act (NEPA) regulations, 40 C.F.R § 1502.7, mandate that “The text of final environmental impact statements. . . shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.” The California Environmental Quality Act (CEQA) regulation, 14 Cal. Code Regs § 15141, is similar: “ The text of draft EIRs should normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages.”

Here, the drafts previously issued including plan, Draft EIR/EIS and appendices included more than 40,000 pages. We are informed and believe that the new CEQA/NEPA documents include about 8000 pages. Moreover, the new drafts are unavailable in a single, unified document. Instead, the BDCP website provides access to a multitude of sections through a byzantine list of nebulously titled hyperlinks. Rather than facilitating public participation, this format deters it, as website visitors will find themselves blindly clicking through over 125 hyperlinks, grasping to gain a sense of the Draft EIR/EIS as a whole. Moreover, the original 40,000 pages must be revisited to understand the new 8,000 pages. As the RDEIR/SDEIS itself claims: “When reviewed together with the Draft EIR/EIS, this RDEIR/SDEIS sufficiently describes and discloses the effects of implementing Alternatives 4A, 2d, and 5A for the purposes of CEQA and NEPA.” (RDEIR/SDEIS 1-5). A 45 day comment period may be adequate for a 150 or 300 page Draft EIR or EIS. It is not adequate for review of 8000 pages revising and supplementing 40,000 pages.

This short public comment period looks like a deliberate effort to make it virtually impossible for members of the public to be able to comprehend and respond with meaningful comments to the new NEPA and CEQA documents. The BDCP agencies took almost one year to prepare the new documents and there is no public need for haste in providing too short a comment period. There are many reports in the media that the exporters who would pay for the Water Tunnels are now uncertain whether it makes sense to do so. That is because the change from a Habitat Conservation Plan to the California Water Fix means there would not be a 50 year permit for virtually guaranteed water deliveries making the project at least arguably worthwhile to the exporters financially. In other words, there is no need for a rush at this time because the beneficiaries of the project have not even decided whether they are willing to pay for it.

Since the Bureau of Reclamation has not prepared the required Biological Assessment and the U.S. Fish and Wildlife Service and National Marine Fisheries Service have not prepared the required Biological Opinions (RDEIR/SDEIS 1-15), the BDCP agencies have deprived the public of critical information in the form of Biological Assessments and Biological Opinions to be able to meaningfully evaluate the proposed actions. The ESA Regulations (50 C.F.R. § 402.14(a)) require that “Each Federal agency shall review its actions *at the earliest possible time* to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required. . . .” *Karuk Tribe of California v. U.S. Forest Service*, 681 F.3d 1006, 1020 (9<sup>th</sup> Cir. 2012) (en banc)(emphasis added), *cert. denied*, 133 S.Ct. 1579 (2013). The Biological Assessments and Biological Opinions are the written documents that federal agencies must prepare during the ESA consultation process. The NEPA Regulations require that “To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the. . . Endangered Species Act. . . .” 40 C.F.R. § 1502.25(a). Here, there is no compliance with the “at the earliest possible time,” “concurrently with,” and “integrated with” requirements. “ESA compliance is not optional,” and “an agency may not take actions that will tip a species from a state of precarious survival into a state of likely extinction.” *National Wildlife Federation v. National Marine Fisheries Service*, 524 F.3d 917, 929-30 (9<sup>th</sup> Cir. 2008). The result is that commenters are deprived of the critical information that would be provided by a Biological Assessment and Biological Opinions.

In addition, the BDCP agencies received a total of 18,532 separate comments on the original draft documents. (RDEIR/SDEIS 1-3, 1-4). Those comments included 1518 unique letters from individual members of the public and 432 letters from agencies, organizations, and stakeholder groups. (*Id.*) Those comments are vital to learning the views of organizations and public agencies that are not Water Tunnels boosters and contractors. For example, the U.S. Environmental Protection Agency declared last August that: “Specifically, we recommend that an alternative be developed that would, at minimum, not contribute to an increase in the magnitude or frequency of exceedances of water quality objectives, and that would address the need for

water availability *and greater freshwater flow through the Delta.*” (EPA letter August 26, 2014, p.2) (emphasis added). For another example, on July 16, 2014, the United States Army Corps of Engineers issued comments that: “I have determined the EIS/EIR is not sufficient at this time in meeting the Corps’ needs under the National Environmental Policy Act (NEPA). . . in particular with regard to the incomplete description of the proposed actions, alternatives analysis. . . and impacts to waters of the United States and navigable waters, as well as the avoidance and minimization of, and compensatory mitigation for, impacts to waters of the United States.” (Letter p. 1).

Despite repeated requests, the BDCP agencies have continued to refuse ever since December 2013 to post any of the comments by organizations or public agencies on the BDCP website. This deliberate concealment of independent and contrary views and information from the public also now makes it more difficult for the public to prepare meaningful comments on the new NEPA and CEQA documents. In effect, the BDCP agencies require everyone to start from ground zero in an effort to understand the project and its environmental impacts by concealing the independent and contrary views and information provided by previous comments. Moreover, comments such as those from the EPA and Army Corps constitute critical new information that would be the foundation for many informed comments at this time. The comments from agencies and the public were so important that the BDCP agencies say they modified the documents and the alternatives based on the input. (RDEIR/EIS ES 2, 9, 15;1-2). The comments already received are thus admittedly important and must be provided to the public on the BDCP website at this time so that the public will also have the benefit of the critical information provided by the previous comments.

Finally, extension of time for comment is also necessary because the Department of Water Resources has declared it will not be producing documents previously requested by Restore the Delta pursuant to California’s Public Records Act until August 28, 2015. The requested documents are essential with respect to the description of the subject project.

In sum, the current comment period is inadequate because it fails to provide members of the public with adequate time for review. The proposed project is the most controversial public works project in California history. It is extremely complicated and the subject of voluminous analysis in the form of project justification and advocacy. The subject is critically important to every Californian. We therefore request the additional time necessary to attempt to carefully scrutinize the subject NEPA and CEQA documents and then provide meaningful input by way of public comment.

Should you have questions, please contact Conner Everts, Co-Facilitator, Environmental Water Caucus at (310) 394-6162 ext. 111 or Robert Wright, Senior Counsel, Friends of the River

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at (916) 442-3155 ext. 207 or [bwright@friendsoftheriver.org](mailto:bwright@friendsoftheriver.org). We also request the courtesy of a prompt written response to this Request for a 77-day extension of the public comment period. <sup>1</sup>

Sincerely,

/s/ Conner Everts  
Co-Facilitator  
Environmental Water Caucus

/s/ E. Robert Wright  
Senior Counsel  
Friends of the River

/s/ Carolee Krieger  
Executive Director  
California Water Impact Network

/s/ Bill Jennings  
Executive Director  
California Sportfishing Protection Alliance

/s/ Barbara Barrigan-Parilla  
Executive Director  
Restore the Delta

Additional Addressees, all via email:

Maria Rea, Assistant Regional Administrator  
National Marine Fisheries Service

Michael Tucker, Fishery Biologist  
National Marine Fisheries Service

Larry Rabin, Acting, Field Supervisor, S.F. Bay-Delta  
U.S. Fish and Wildlife Service

Lori Rinek  
U.S. Fish and Wildlife Service

Mary Lee Knecht, Program Manager  
U.S. Bureau of Reclamation

Patty Idloff  
U.S. Bureau of Reclamation

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<sup>1</sup> The BDCP agencies are so disinterested in public involvement that we have not found contact information for a contact person in the new NEPA and CEQA documents, necessitating addressing this Request letter to a number of federal and California officers and staff members.

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Deanna Harwood  
NOAA Office of General Counsel

Kaylee Allen  
Department of Interior Solicitor's Office

Jared Blumenfeld, Regional Administrator (regular mail)  
U.S. EPA, Region IX

Tom Hagler  
U.S. EPA General Counsel Office

Tim Vendlinski, Bay Delta Program Manager, Water Division  
U.S. EPA, Region IX

Stephanie Skophammer, Program Manager  
U.S. EPA, Region IX

Erin Foresman, Bay Delta Coordinator  
U.S. EPA  
Sacramento, CA

Lisa Clay, Assistant District Counsel  
U.S. Army Corps of Engineers

Michael Nepstad  
U.S. Army Corps of Engineers

Diane Riddle, Environmental Program Manager  
State Water Resources Control Board